



January 2, 2020

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: FOIA request for records related to automobile manufacturers' model year 2021 light-duty Certificates of Conformity

Dear National Freedom of Information Officer:

Environmental Defense Fund respectfully requests copies of certain records of the U.S. Environmental Protection Agency pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and applicable EPA regulations, 40 C.F.R. §§ 2.100–2.406. The requested records relate to light-duty vehicle Certificates of Conformity for model year 2021 that EPA has issued pursuant to 40 C.F.R. § 86.1848-01.

Specifically, EDF requests copies of all Certificates of Conformity issued by EPA for model year 2021, as well as any emails or other correspondence¹ between EPA and any external party in which any 2021 Certificates of Conformity are transmitted or preserved as attachments. EDF seeks all responsive records produced, modified, or transmitted as of the date that EPA begins searching for records responsive to this request.

This request does not include records relating to annual certification preview meetings described in 75 Fed. Reg. 25,324, 25,470–71 or Compliance Plans submitted to EPA pursuant to 40 C.F.R. § 600.514-12, except to the extent that such records also include the Certificates of Conformity that are the subject of this request. EDF is submitting separate requests relating to preview meetings and Compliance Plans, which should not delay the processing of this request.

¹ In accordance with 5 U.S.C. § 552(f)(2) (describing “record[s]”), EDF intends for “correspondence” to be broadly construed, and to include, without limitation, electronic and hardcopy communications, text messages, voice mails, records of phone calls, records of meetings, meeting invitations, calendars, written notes, and correspondence transmitted through any electronic platform.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(f). There is a “compelling need” and “urgency” to inform the public of the information sought in this request, and one of EDF’s primary activities is disseminating to the public information about threats to public health and the environment, as well as policy responses to those threats. *Id.* § 2.104(f)(1)(ii). In support of this request I certify that the following information is true and correct to the best of my knowledge and belief:

1. EDF engages in extensive, daily efforts to inform the public about matters involving public health and environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than two million members and supporters, active engagement on social media, and frequent appearances by staff in major media outlets.²
2. EDF employs several staff “whose primary professional activity or occupation is information dissemination.” 40 U.S.C. § 2.104(f)(3). For example, the responsibilities of EDF’s Legal and Regulatory Affairs Communications Director primarily include disseminating information about developments in climate change law and policy through press releases, interviews, and EDF’s website, and working with news media to promote accurate, informative reporting on EDF’s work and environmental policy.
3. There is urgency to inform the public about the climate crisis and the laws, policies, and enforcement procedures aimed at limiting climate pollution from vehicles. There is particular urgency to inform the public about ongoing efforts to roll back clean car standards, which would dramatically increase climate pollution from the U.S. light-duty vehicle fleet starting with model year 2021.³ The transportation sector is the largest source

² See, e.g., Juliet Eilperin and Brady Dennis, *Trump Administration to Revoke California’s Power to Set Stricter Auto Emissions Standards*, WASH. POST (Sept. 17, 2019), https://www.washingtonpost.com/climate-environment/trump-administration-to-revoke-californias-power-to-set-stricter-auto-emissions-standards/2019/09/17/79af2ee0-d97b-11e9-a688-303693fb4b0b_story.html (quoting EDF Senior Attorney Martha Roberts); Jason Mathers, *4 New Developments that Prove Electric Trucks and Buses Are Gaining Momentum*, EDF Energy Exchange Blog (Aug. 21, 2019), <http://blogs.edf.org/energyexchange/2019/08/21/4-new-developments-that-prove-electric-trucks-and-buses-are-gaining-momentum/>; Martha Roberts, *Trump Administration Ends Talks with California, Presses Ahead with Clean Car Standards Rollback*, EDF Climate 411 Blog (Feb. 21, 2019), <http://blogs.edf.org/climate411/2019/02/21/trump-administration-ends-talks-with-california-presses-ahead-with-clean-car-standards-rollback/>; Chester France, *Administration Cooks the Books to Justify Rollback of the Clean Car Standards*, EDF Climate 411 Blog (Aug. 7, 2018), <http://blogs.edf.org/climate411/2018/08/07/administration-cooks-the-books-tojustify-rollback-of-the-clean-car-standards/>; Martha Roberts, *The Attack on Our Clean Cars is the Biggest Scandal at EPA*, THE HILL (May 8, 2018), <https://thehill.com/opinion/energy-environment/386692-the-attack-on-our-clean-cars-is-the-biggest-scandal-at-epa>.

³ See Nat’l Highway Traffic Safety Admin., *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021-2026 Passenger Cars and Light Trucks Draft Environmental Impact Statement* S-18 (July 2018),

of U.S. greenhouse gas emissions.⁴ Recent reports of the Intergovernmental Panel on Climate Change find that we risk exceeding the Paris Agreement goal of limiting global warming to 1.5° Celsius—with catastrophic effects—as soon as 2040.⁵ Accordingly, keeping the public informed about vehicle emissions policies, enforcement practices, and the impending deeply harmful rollback of clean car standards is an urgent, vital component of EDF’s work.

4. Information about EPA’s activities to ensure compliance with the model year 2021 light duty vehicle greenhouse gas standards—including its issuance of Certificates of Conformity—is especially important to the public’s understanding of the policy response to the climate crisis. EPA’s proposed changes to clean car standards would take effect beginning in model year 2021. Moreover, EPA’s processes for finalizing the proposed changes to emission standards and ensuring compliance with applicable standards in model year 2021 are ongoing, and the public needs access to the requested information soon if it is to make use of that information as it assesses and participates in these processes. Given the urgency of reducing greenhouse gas emissions from the transportation sector and EPA’s ongoing consideration of policy actions that would significantly impact the nation’s ability to achieve those reductions, there is a compelling need to disseminate information about compliance planning efforts for model year 2021.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information in the public interest, EDF respectfully requests a waiver of fees associated with this request, pursuant to 40 C.F.R. § 2.107(l)(1) and 5 U.S.C. § 552(a)(4)(A)(iii).

First, disclosure of the requested information is in the public interest. 40 C.F.R. § 2.107(l)(2). The requested records concern “operations or activities of the government,” *id.* § 2.107(l)(2)(i), because EPA issues Certificates of Conformity pursuant to 40 C.F.R. § 86.1848-01 as a key step in ensuring compliance with vehicle emission standards. The requested records are “likely to contribute” “significantly,” *id.* § 2.107(l)(2)(ii), (iv), to public understanding of EPA’s operations in ensuring compliance by informing the public about key aspects of the compliance and certification process, such as how many Certificates of Conformity EPA has issued for model year 2021, which manufacturers received Certificates of Conformity, and how EPA performs its vehicle emission standard compliance and enforcement obligations. None of this information is currently in the public domain. And the requested information will contribute to “public understanding,” *id.* § 2.107(l)(2)(iii), because EDF is well positioned to disseminate the information to its members and other interested members of the public. We routinely issue press

https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/ld_cafe_my2021-26_deis_0.pdf (estimating that the proposed rollback would increase emissions from 2021 to 2100 by up to 7.4 billion metric tons of CO₂).

⁴ EPA, *Sources of Greenhouse Gas Emissions*, <https://www.epa.gov/ghgemissions/sources-greenhouse-gas-emissions> (last visited Dec. 5, 2019).

⁵ See, e.g., Intergovernmental Panel on Climate Change, *Special Report: Global Warming of 1.5° C*, Ch. 1 at 81 (Oct. 7, 2018), https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_Chapter1_Low_Res.pdf (“If the current warming rate continues, the world would reach human-induced global warming of 1.5°C around 2040.”).

releases, action alerts, blog posts, reports, analyses, and other public outreach materials.⁶ We fully intend to disseminate newsworthy information received in response to this request. In addition to our own capacity to convey information to the public, the information that EDF has obtained through FOIA has been disseminated through news articles to a wide audience, enhancing public knowledge.⁷

Second, disclosure of the requested information is not primarily in EDF's commercial interest. 40 C.F.R. § 2.107(l)(3). EDF is a non-profit organization that has no commercial, trade, or profit interests that would be furthered by the requested disclosure. *Id.* § 2.107(l)(3)(i). Rather, we are seeking the disclosure to promote the public interest by disseminating information and aiding our work to reduce vehicle pollution. Accordingly, we respectfully request that the documents be furnished without charge.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (303) 447-7205 or by email at ahenderson@edf.org.

Respectfully submitted,

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Environmental Defense Fund
2060 Broadway, Suite 300
Boulder, CO 80302

⁶ See, e.g., Ben Levitan, *Public Records Confirm EPA's "Censored Science" Proposal was an End-Run Around Congress*, EDF Climate 411 Blog (Nov. 12, 2019), <http://blogs.edf.org/climate411/2019/11/12/public-records-confirm-epas-censored-science-proposal-was-an-end-run-around-congress/>; EDF, Promoting Government Transparency (last updated Dec. 2019), <https://www.edf.org/climate/promoting-government-transparency>.

⁷ See, e.g., Scott Waldman, *Emails: Trump Aide Had Blueprint to Unravel Climate Science*, E&E NEWS (Dec. 10, 2019), <https://www.eenews.net/climatewire/stories/1061769389/> (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer & Seth Borenstein, *Emails: Trump Official Pressed NASA on Climate Science*, ASSOCIATED PRESS (June 14, 2019), <https://apnews.com/4ec9affd55a345d582a4cc810686137e> (same); Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, BLOOMBERG (June 1, 2018), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-readycalifornia-autos-challenge-in-2017>, (same); Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*, ASSOCIATED PRESS (May 26, 2018), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4> (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. TIMES (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html> (same).